

# SUE JESKEWITZ

State Representative • 24th Assembly District

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## **Access to Juvenile Court Records— AB676 Testimony before the Assembly Committee on Children and Family Law January 24, 2008**

### **Relating to disclosure of juvenile court records ... and providing a penalty.**

Thank you Chairwoman Owens and fellow members of the Children and Family Law Committee for hearing Assembly Bill 676 today.

This legislation is the result of many discussions and compromises made while working with Senators Jim Sullivan and Alberta Darling, current Milwaukee County Juvenile Court Presiding Judge Mary Triggiano, former Milwaukee County Juvenile Court Presiding Judge Christopher Foley and Milwaukee County Deputy District Attorney, Patrick Kenney. We wanted to find a balance between giving certain professionals, with a legitimate need, access to juvenile court records while respecting the rights of confidentiality of those records.

As a member of the Milwaukee Partnership Council, my main concern was that child protective service social workers did not have access to juvenile court records and this severely hampered their ability to make informed decisions about intake investigations of child abuse and neglect referrals in Wisconsin. This is particularly a problem in Milwaukee County, where child welfare is administered by the state. When a child is taken into custody under these circumstances child protective service social workers need to be able to verify that a proposed caregiver has no history of abuse or neglect proceedings and that any other children residing in that home do not have any allegations of sexual assault at the time of placement.

While working on this legislation we found other circumstances where access to juvenile court records is appropriate and included them in this legislation. For instance, prosecutors have a statutory obligation to provide certain information to defense counsel for which they presently are unauthorized to gain access. This legislation simply gives professionals who have a legitimate need for access to juvenile court records the authority to do so.

What AB 676 does is:

- Opens juvenile court records for inspection by DHFS and other child protective service social workers, courts, prosecutors, and law enforcement agencies;
- Limits the circumstances for which these records may be used; and
- Provides penalties for disclosure of information in violation of the bill.

I'm sure each of you agrees that it would be unthinkable to remove a child from their home under the guise of protective placement and then place that child in a home where that abuse may continue due to incomplete information provided to child protective service social workers. We must give these workers access to information they need to protect these already abused and vulnerable children.

Thank you again for hearing this bill and I encourage your support for Assembly Bill 676 as it makes its way through this committee and again when it comes for a vote before the full Assembly.



State of Wisconsin  
**Department of Health and Family Services**

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Jim Doyle, Governor  
Kevin R. Hayden, Secretary

January 24, 2008

TO: Assembly Committee on Children and Family Law  
FROM: John Tuohy, Director of the Office of Program Evaluation and Planning in  
the Division of Children and Family Services, DHFS  
RE: Assembly Bill 676

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Good morning. I am John Tuohy, Director of the Office of Program Evaluation and Planning in the Division of Children and Family Services, and I am speaking on behalf of Reggie Bicha, DHFS Administrator for the Division of Children and Family Services. Representative Owens and committee members, thank you for the opportunity to testify in favor of Assembly Bill 676. Thank you also to Representative Jeskewitz and Senator Sullivan for authoring this bill that will assist child welfare agencies to ensure the safety of children. We appreciate you taking up this bill in a very timely manner.

As many of you know, the Circuit Court Automation Program (CCAP) system is used by courts to record petitions, schedule hearings and record actions taken in all court cases including child welfare and juvenile justice actions. Under current law, the Director of State Courts Office (DSCO) makes some information from CCAP available to the general public. Access to CCAP information regarding juvenile court actions, however, is restricted to clerks of court and county staff performing court intake functions.

Information on juvenile court actions, particularly juvenile delinquency, is important to child welfare agencies, including the state-run Bureau of Milwaukee Child Welfare, as they investigate child safety issues and make placements of children in out-of-home care. Knowledge of juvenile delinquency records for youth can be important to determine whether to remove children from the home, establish an in-home safety plan and select placement providers. Leaving vulnerable children in homes with delinquent youth or placing children with providers who have delinquent youth can put children at risk.

Child welfare staff currently contact clerks of court or court intake staff to obtain information on juvenile cases. However, the process is cumbersome and not feasible in emergency or after-hours situations. This can lead to children being left in vulnerable situations.

This bill will allow child welfare staff direct on-line access to the juvenile portion of the CCAP system. Child welfare staff will be able obtain the information more efficiently and will be able to access the information when courts are closed.

Under AB 676, the following child welfare staff would have access to the juvenile portion of CCAP:

- Staff of the DHFS Bureau of Milwaukee Child Welfare and county human services and social services agencies.
- Staff of licensed child welfare agencies authorized to provide services to children under court jurisdiction

Authorized staff would use court records for the purpose of providing intake, dispositional, placement or other services for the court under the Children's or Juvenile Justice Codes. As I noted earlier, one of the most important uses will be to ensure that children are safe whether remaining in their home or being placed outside their home. The Division of Children and Family Services will work with the Director of State Courts Office to establish guidelines for how child welfare agencies can access juvenile information from CCAP and to maintain the confidentiality of the juvenile information.

Thank you again for the opportunity to testify in favor of AB 676. I am available to answer any questions you may have about the proposed changes in AB 676.



OFFICE OF DISTRICT ATTORNEY

# *Milwaukee County*

John T. Chisholm • District Attorney

January 20, 2008

Rep. Carol Owens  
Rep. Donald Pridemore  
Rep. Sheryl Albers

Rep. Suzanne Jeskewitz  
Rep. Joel Kleefisch  
Rep. Tamara Grigsby

Rep. Donna Seidel  
Rep. Terese Berceau

RE: Testimony on AB-676 Before the Committee on Children and Family Law

The Milwaukee County District Attorneys Office supports this important legislation, which would assist in the rehabilitation and support of children and families, and promote fairness and efficiency in the criminal justice system. AB-676 would improve present law in many ways.

First, the Director of State Courts has the overall responsibility for managing the Consolidated Court Automation Program (CCAP), which includes the computerized storage of juvenile court records. The office of the Director of State Courts has had the difficult task of administering a system of new technology under laws that have not been modified to accommodate computerized record keeping. For example, our office handles juvenile delinquency cases, Children in Need of Protection/Service (CHIPS) cases, Termination of Parental Rights (TPR) cases, and guardianships. Therefore, we are party to probably in excess of 95% of all cases handled at the Children's Court Center in Milwaukee County. However, there are a small percentage of cases to which we are not a party and would not have a right of access to those records under present law, i.e. a private TPR and adoption. Technology does not permit our office to have access to CCAP without having access to all juvenile cases within the system, including those to which we are not entitled to have access under the present statutory scheme. If our office needed to maintain a separate database for all of our cases, it would be extremely expensive for taxpayers and incredibly inefficient. Fortunately, one exception to the law is a court order, which our office was able to obtain from the former presiding juvenile court judge.

However, this bill enables our office to have access to juvenile CCAP yet protects the privacy of these records.

A second important factor includes other legislative and court mandates that attempted to elevate the fairness of the criminal justice system by requiring enhanced information sharing from the prosecutor. The legislature has determined that the credibility of a witness may be attacked if the witness has been adjudicated delinquent (sec. 906.09 WI stats.). The US Supreme Court has gone further, requiring prosecutors to notify defendants if witnesses have pending delinquency matters while explicitly rejecting any philosophical interest in protecting the anonymity of juvenile offenders. See Davis v. Alaska, 415 U.S. 308 (1974). Additionally, Wisconsin courts have determined that the state has an ongoing duty to disclose to defense counsel a pending criminal case of a witness to enable a defendant to reveal possible biases, prejudices, or other ulterior motives of the witness during cross-examination. See State v. Randall, 197 WI 2d.29 (Ct. App. 1995). By analogy, if a witness was the subject of a pending CHIPS case and the matter was being litigated by the district attorney, a prosecutor should notify the defense counsel of the pending CHIPS case.

As the law is presently written, a prosecutor may not have access to information that he/she is required to provide to defense counsel. As juvenile CCAP presently operates, the DA in Milwaukee County only has access to Milwaukee County juvenile court records. Therefore, if a person has a juvenile adjudication or case pending in another county, the DA would not have the ability to access this information on juvenile CCAP. Additionally, the DA would be required to seek a court order in all other Wisconsin counties to determine if this individual has a juvenile adjudication or juvenile case pending.

Additionally, the unique structure of the Milwaukee County child welfare system further creates problems for access to juvenile court records under the present statutes. In every other county, the Department of Human Services (DHS) is responsible for providing both child welfare and delinquency court services. However, the system in Milwaukee County is bifurcated with the state operating the child welfare system and the county providing delinquency court services. As such, there is no clear statutory authority for social workers from the Bureau of Milwaukee Child Welfare (BMCW) to access court records on the juvenile CCAP website. The inability of BMCW social workers to access juvenile CCAP could result in the placement of children with juvenile sex offenders and other inappropriate individuals. All of these serious problems are solved by this legislation.

Finally, this legislation continues to protect the privacy interest of children and families by restricting access to public officials charged with administering child welfare programs and protecting the community. Additionally, public officials who might abuse this greater access to juvenile court records would be subject to a significant penalty.

Our office joins in supporting this legislation with the Honorable Mary Triggiano, presiding judge of the Children's Court Center of Milwaukee County, and the Honorable Christopher Foley, former presiding judge and contributor to the Wisconsin Judicial Bench Book, Juvenile Edition, and former chairperson of the Children's Wisconsin Jury Instruction Manual.

Respectfully submitted,

Patrick J. Kenney  
Deputy District Attorney  
Children's Court Center, Milwaukee County